TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 84.

THE CLEVELAND TERMINAL AND VALLEY RAILROAD COMPANY AND THE DETROIT AND CLEVELAND NAVIGATION COMPANY, APPELLANTS,

vs.

THE CLEVELAND STEAMSHIP COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED AUGUST 13, 1906.

(20,333.)

(20,333.)

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 10, 1907.

1 No. 2414. In Admiralty.

District Court of the United States for the Northern District of Ohio, Eastern Division, ss.

Whereas, a Libel was filed in said Court on the 19th day of May, 1906, by The Cleveland Terminal & Valley Railroad Company, and The Detroit & Cleveland Navigation Company, Libelants, against Steam Propeller William E. Reis, for the reasons and causes in the said libel mentioned, and the said Libelants and National Surety Company of New York, surety, the parties hereto, hereby covenanting and agreeing that in case of default or contumacy on the part of the said libellants or said surety, execution may issue against their goods, chattels and lands, for the sum of Two Hundred and Fifty Dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned, shall be, and are bound in the sum of Two Hundred and Fifty Dollars, conditioned that the libellants above named, shall pay all such costs as shall be awarded against them by this Court, or in case of appeal by the Appellate Court, or for which they may be liable.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY AND
THE DETROIT & CLEVELAND NAVIGATION COMPANY,
By KLINE, TOLLES & GOFF, *Att'ys.*
NATIONAL SURETY COMPANY,
By FRIZZARD B. TALMADGE, *Its Att'y in Fact.*

[CORPORATION SEAL.]

Taken and acknowledged this — day of —— 190– before me.

—— ——.

2 (Endorsed:) No. 2414. United States District Court Northern District of Ohio Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al.*, *vs.* Steam Propeller William E. Reis. Stipulation for costs. Behalf of Libelants. Filed May 19 1906 at — o'clock — M. H. F. Carleton, Clerk.

3 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the Marshal of the Northern District of Ohio, Greeting:

Whereas, a libel was filed in the District Court of the United States, for said District on the 19th day of May, A. D. 1906, by the Cleveland Terminal & Valley Railroad Company against the steam propeller Wm. E. Reis, her engine, boilers, machinery, boats, tackle,

apparel and furniture, in a cause of collision and damage civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court, in that behalf to be made, and that all persons interested in the said property may be cited in general and special, to answer the premises and due proceedings being had, that the said property may, for the causes in the said libel mentioned, be condemned and sold to pay the demand of the libellant.

You are therefore hereby commanded, to arrest the said property and detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said Court, on the first day of the session thereof, to be held at the city of Cleveland, in said District, on the first Monday in June next, at ten o'clock in the forenoon of the same day, if the same shall be a day of juris tiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf.

4 And what you shall have done in the premises, do you then and there make due return thereof, together with this writ.

Witness, the Honorable Robert W. Tayler, Judge of said Court, at Cleveland, in said District, this 19th day of May, A. D. 1906, and in the 130th year of the Independence of the United States of America.

[OFFICIAL SEAL.] H. F. CARLETON, *Clerk.*

To the Clerk:

Please withhold this writ until advised to serve.

LEE & MARTY.

May 19, 1906.

5 (Endorsed:) No. 2414. United States District Court Northern District of Ohio. In Admiralty. Cleveland Valley & Terminal R. R. Co. *vs.* Steam Prop. Wm. E. Reis. Warrant of Arrest. Returnable at Cleveland, June 4th, 1906. Action for Collision & damage. Interest from —. Probable costs $250.00. Filed Jun- 4 1906 at — o'clock — M. H. F. Carleton, Clerk.

6 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the Marshal of the Northern District of Ohio, Greeting:

Whereas, a libel was filed in the District Court of the United States, for said district, on the 19th day of May, A. D. 1906, by the Cleveland Terminal & Valley Railroad Company, *et al.* against the steam Propeller Wm. E. Reis, her engines, boilers, machinery, boats, tackle, apparel and furniture, in a cause of collision and damages

civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court, in that behalf to be made, and that all persons interested in the said property may be cited in general and special, to answer the premises and due proceedings being had, that the said property may, for the causes in the said libel mentioned, be condemned and sold to pay the demand of the libellant.

You are therefore hereby commanded, to arrest the said property and detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, on the first day of the session thereof, to be held at the city of Cleveland, in said district, on the first Monday in July next, at ten o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction; otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their
7 allegation in that behalf.

And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Honorable Robert W. Tayler Judge of said Court, at Cleveland, in said District, this 15th day of June A. D. 1906, and in the 130th year of the independence of the United States of America.

[OFFICIAL SEAL.] H. F. CARLETON, *Clerk.*
By F. J. DENZLER,
Deputy Clerk.

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, ss:*

Received this writ at Cleveland, Ohio, on June 15, 1906, and on the same day and place, I executed the same by handing a true and certified copy hereof with all the endorsements thereon to Goulder, Holding and Masten, proctors for the respondent and owners of the within named Steam Propeller Wm. E. Reis, whereupon a good and sufficient bond was given and said steamer was released from the custody of the Marshal.

F. M. CHANDLER,
U. S. Marshal,
By E. A. CLOBITZ, *Deputy.*

Fees.

Service	$2.00
Travel	.06
Taking bond	.50
	$2.56

8 (Endorsed:) U. S. Marshal's No. 2532. No. 2414. United States District Court Northern District of Ohio. In Admiralty. Cleveland Term. & Valley R. R. Co. *vs.* St. Wm. Reis, *et al.* Alias warrant of arrest. Returnable at Cleveland forthwith, 1906. Action for — Interest from — Probable costs $250.00. Filed Jun- 15 1906 at — o'clock — M. H. F. Carleton, Clerk. Kline, Tolles & Goff and Lee & Marty, Proctors for Libellant.

9 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL AND VALLEY RAILROAD COMPANY, and DETROIT & CLEVELAND NAVIGATION COMPANY, Libelants,

vs.

STEAMER "WILLIAM E. REIS," THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Claim.

To the Honorable Judge of the United States District Court for said District:

The Cleveland Steamship Company, owner of the said Steamer William E. Reis, her engines, boilers, machinery, boats, tackle, apparel and furniture, intervening for its interest in said property, appears before this Honorable Court and claims the said property and states that the said The Cleveland Steamship Company is the true, *bona fide* owner thereof, and that no other person or persons are owners thereof.

And thereupon said claimant prays that it may be permitted to defend accordingly, and that this Honorable Court will be pleased to decree a restitution of the aforesaid property to it, and otherwise right and justice to administer in the premises.

THE CLEVELAND STEAMSHIP COMPANY,
By JOHN MITCHELL, *President.*

NORTHERN DISTRICT AND STATE OF OHIO,
County of Cuyahoga, ss:

John Mitchell, being duly sworn, says that the claimant, The Cleveland Steamship Company, is a corporation; that he is its president and duly authorized herein, and that the statements of the foregoing claim are true.

JOHN MITCHELL.

Subscribed in my presence and sworn to before me by the said John Mitchell, this 7th day of June, 1906.

FREDERICK L. LECKIE,
[NOTARIAL SEAL.] *Notary Public.*

Tax Fee —.

10 (Endorsed:) No. 2414. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al.*, Libelants, *vs.* Steamer "William E. Reis," The Cleveland Steamship Company, Claimant. Claim. We consent to filing out of rule. Kline, Tolles & Goff, Lee & Marty. 6/15/'06. Filed Jun- 15 1906 at — o'clock — M. H. F. Carleton, Clerk. Goulder, Holding & Masten, Attorneys for Claimant and Respondent.

11 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

Know all men by these presents that we, The Cleveland Steamship Company, as principal, and The Bankers Surety Company, as surety, both corporations of the State of Ohio and resident in said District, are held and firmly bound unto F. M. Chandler, Marshal of the United States for the aforesaid District, in the sum of Thirty-Five Thousand Dollars ($35,000), lawful money of the United States of America, to be paid unto the said F. M. Chandler, United States Marshal, his executors, administrators and assigns, to which payment well and truly to be made we bind ourselves and each of us, and our successors or assigns, jointly and severally by these presents.

Sealed with our seals and dated this seventh day of June, in the year of Our Lord one thousand nine hundred and six.

Whereas a libel has been filed in the District Court of the United States for the Northern District of Ohio, Eastern Division, on the 19th day of May, 1906, by The Cleveland Terminal & Valley Railroad Company and Detroit & Cleveland Navigation Company, Libelants, against the Steamer "William E. Reis," her tackle, apparel and furniture, for the sum of Twenty Three Thousand Three Hundred, Eighty-nine and 46/100 Dollars ($23,389.46), on which process of attachment has been issued and the said steamer, her tackle, apparel and furniture is in the custody of the Marshal under the said attachment, and The Cleveland Steamship Company, claimant of said steamer, has applied for a discharge of said steamer from the custody of the Marshal and has filed a claim claiming the said steamer as owner, and has filed a stipulation for the claimant's costs pursuant to the rules and practice of said Court:

12 Now, therefore, the condition of this obligation is such that if the above bounden The Cleveland Steamship Company shall abide and answer the decree of the Court in such cause, then the above obligation to be void; otherwise to be and remain in full force and virtue.

THE CLEVELAND STEAMSHIP COMPANY.
JOHN MITCHELL, *President.*

[CORPORATION SEAL.] THE BANKERS SURETY COMPANY.
GEO. W. OLMSTED,
2nd Vice-President.

Attest: P. W. HARVEY, *Secretary.*

Taken and acknowledged before me and signed by the parties hereto in my presence at Cleveland, Ohio, this seventh day of June, A. D., 1906.

FREDERICK L. LECKIE,
[NOTARIAL SEAL.] *Notary Public.*

Tax fee —.

I hereby approve the surety on the above bond.
Attest: R. W. TAYLER,
U. S. District Judge.

June 15, 1906.

13 (Endorsement:) No. 2414. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company and Detroit & Cleveland Navigation Company, Libelants, *vs.* Steamer "William E. Reis," her engines etc., The Cleveland Steamship Company, Claimant. Bond. O. K. as to amount; Roger M. Lee. Filed June 15, 1906 at — o'clock — M. A. F. Carleton, Clerk. Goulder, Holding & Masten, Proctors for Claimant and Respondent.

14 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY and DETROIT & CLEVELAND NAVIGATION COMPANY, Libelants,
vs.
STEAMER "WILLIAM E. REIS," THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Exception to Libel.

Now comes The Cleveland Steamship Company, a corporation of the State of Ohio, claimant in the above entitled cause, and excepts to the libel herein filed for the following reason:

That it does not state a cause of action within the admiralty and maritime jurisdiction of this Honorable Court.

THE CLEVELAND STEAMSHIP COMPANY,
By GOULDER, HOLDING & MASTEN,
Its Proctors.

15 [Endorsed:] No. 2414. In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al.*, Libelants, *vs.* Steamer "William E. Reis," The Cleveland Steamship Company, Claimant. Exception to Libel. We consent to filing out of rule. Kline, Telles & Goff. 6/15/06. Lee & Marty. Filed Jun- 15, 1906, at — o'clock — M. H. F. Carleton, Clerk. Goulder, Holding & Masten, Attorneys for Claimant and Respondent.

16 No. 2414. In Admiralty.

District Court of the United States for the Northern District of Ohio, Eastern Division, *ss:*

Whereas, a Libel was filed in said Court on the 19th day of May, 1906, by The Cleveland Terminal & Valley Railroad Company, and The Detroit & Cleveland Navigation Company, Libelants, against the Steamer William E. Reis, her tackle, apparel, etc.—The Cleveland Steamship Co., Claimant, for the reasons and causes in the said Libel mentioned, and the said The Cleveland Steamship Company and The Bankers Surety Company, surety, the parties hereto, hereby covenanting and agreeing that in case of default or contumacy on the part of the said The Cleveland Steamship Co. or The Bankers Surety Co., surety, execution may issue against their goods, chattels and lands, for the sum of Two Hundred and Fifty Dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned, shall be, and are bound in the sum of Two Hundred and Fifty Dollars, conditioned that the said The Cleveland Steamship Company above named, shall pay all such costs as shall be awarded against it by this Court, or in case of appeal by the Appellate Court, or for which it may be liable.

THE CLEVELAND STEAMSHIP CO.,
By JOHN MITCHELL, *President.*
THE BANKERS SURETY COMPANY,
By GEO. H. OLMSTED, *Vice Pres.*
Attest: P. W. HARVEY, *Secretary.*

[CORPORATION SEAL.]

Taken and acknowledged this 7th day of June, 1906, before me.

FREDERICK L. LECKIE,
Notary Public in and for Cuyahoga County, Ohio.

[NOTARIAL SEAL.]

Tax Fee —

17 (Endorsement:) # 2414. United States District Court, Northern District of Ohio, Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Co., *et al.*, *vs.* Steam Propeller, Wm. E. Reis. Stipulation for costs. Behalf of Respondents The Cleveland Steamship Co. Claimant. Filed June 15, 1906. H. F. Carleton, Clerk.

18 April Term, A. D. 1906.

FRIDAY, *June 15th, A. D.* 1906.

Present: The Honorable Robert W. Tayler, District Judge.

2414. Admiralty.

THE CLEVELAND TERMINAL AND VALLEY RAILROAD COMPANY and DETROIT & CLEVELAND NAVIGATION COMPANY, Libelants,

vs.

STEAMER "WILLIAM E. REIS," THE CLEVELAND STEAMSHIP COMPANY, Claimant.

At a stated term of the District Court of the United States of America for the Northern District of Ohio, Eastern Division, held at Cleveland, Ohio, on the 15th day of June, 1906, present the Honorable Robert W. Tayler, Judge. It appearing to the Court that a bond with good and sufficient sureties in the form required by law and in an amount agreed to by the libelants and approved by the Court, has been filed in this cause,

It is ordered that the marshal be and he is hereby directed to release said vessel and restore the same to the possession of the claimant, The Cleveland Steamship Company.

Journal 27–168.

19 April Term, A. D. 1906.

MONDAY, *July 2nd, A. D.* 1906.

Present: The Honorable Robert W. Tayler, District Judge.

2414. Admiralty.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL.

vs.

STEAMER "WILLIAM E. REIS," THE CLEVELAND STEAMSHIP CO., Claimant.

This day came the parties by their Proctors, and this cause came on to be heard, upon the exception to the Libel filed herein.

Arguments of Counsel were submitted, whereupon it is ordered, adjudged and decreed, that the exception be and the same is hereby sustained and the Libel herein dismissed, to which order and judgment of the Court, Libellant then and there excepted, and gave notice, in open Court, of intention to appeal.

Journal 27–178.

20 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL., Libelants,
vs.
STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Notice of Appeal.

To the Cleveland Steamship Company, Goulder, Holding & Masten, Proctors:

You are hereby notified that The Cleveland Terminal & Valley Railroad Company and The Detroit & Cleveland Navigation Company, libelants in the above entitled cause, hereby appeal from the final decree of the District Court of the United States for the Northern District of Ohio, Eastern Division, dismissing the libel herein, which was entered in the above entitled action on the 2nd day of July, 1906, to the Supreme Court of the United States.

Dated at Cleveland, Ohio, this 11th day of July, A. D. 1906.

KLINE, TOLLES & GOFF,
ROGER M. LEE,
Proctors for The Cleveland Terminal & Valley Railroad Co. and The Detroit & Cleveland Navigation Co., Libelants and Appellants.

We hereby acknowledge service by copy of the foregoing notice of appeal, petition for appeal, and the assignment of errors accompanying the same, this 11th day of July, 1906.

GOULDER, HOLDING & MASTEN,
Proctors for The Cleveland Steamship Company, Claimant and Appellant.

21 (Endorsed:) # 2414. U. S. District Court, Northern District of Ohio Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al.*, *vs.* Steam Propeller Wm. E. Reis, etc. Notice of Appeal. Filed July 11, 1906. At — o'clock — M. H. F. Carleton, Clerk. Kline, Tolles & Goff, and R. M. Lee, Proctors for Appellants.

22 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL., Libelants,
vs.
STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Petition for Appeal.

To the Honorable Robert W. Tayler, Judge of said Court:

Now come The Cleveland Terminal & Valley Railroad Company and The Detroit & Cleveland Navigation Company, libelants in the above entitled cause, by their proctors, Kline, Tolles & Goff, and Roger M. Lee, and, feeling themselves aggrieved by the final decree of this Court made and entered on the 2nd day of July, 1906, dismissing the libel herein at libelants' costs, they hereby claim an appeal from the whole of said decree to the Supreme Court of the United States, pursuant to the provisions of Section 5 of the act of March 3rd, 1891, providing that appeals in cases in which the jurisdiction of the Court is in issue may be taken from the District Court directly to the Supreme Court; and do hereby present their assignments of error and appeal bond, and ask that said bond be approved and accepted, that said appeal be allowed, that all the records and proceedings in said cause be duly certified to the Supreme Court, and that the questions of jurisdiction raised by the respondent's exception to the libel, and upon which said final decree was based, be certified to the Supreme Court for its decision.

KLINE, TOLLES & GOFF,
ROGER M. LEE,
Proctors for Libelants and Appellants.

23 (Endorsed:) # 2414. U. S. District Court, Northern District of Ohio Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al.*, *vs.* Steam Propeller Wm. E. Reis, etc. Petition for Appeal. Filed July 11, 1906. At — o'clock — M. H. F. Carleton, Clerk. Kline, Tolles & Goff, and R. M. Lee, Proctors for Appellants.

24 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL., Libelants,
vs.
STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Assignment of Errors.

Now come The Cleveland Terminal & Valley Railroad Company and The Detroit & Cleveland Navigation Company, Libelants in the above entitled cause, by their proctors, Kline, Tolles & Goff and Roger M. Lee, and say that in the record and proceedings in said cause and in the final decree entered therein, dismissing the libel, there is error in the following particulars:

(1) The Court erred in refusing to entertain jurisdiction of the libel herein.

(2) The Court erred in refusing to entertain jurisdiction of the libel herein so far as it relates to the damage done to the dock therein mentioned.

(3) The Court erred in refusing to entertain jurisdiction of the libel herein so far as it relates to the damage done to the protection piling therein mentioned.

(4) The Court erred in refusing to entertain jurisdiction of the libel herein so far as it relates to the damage done to the center pier therein mentioned.

(5) The Court erred in sustaining claimant's exception to the libel.

(6) The Court erred in dismissing the libel upon the claimant's exception.

25 Wherefore, these appellants pray that the said decree may be reversed and that this cause may be remanded to the District Court for the Northern District of Ohio with instructions to entertain jurisdiction of and hear the cause of action set forth therein, and that appellants may have all such other and further relief as may be proper in the premises.

KLINE, TOLLES & GOFF,
ROGER M. LEE,
Proctors for Libelants and Appellants.

26 (Endorsed:) #2414. U. S. District Court, Northern District of Ohio Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al.*, *vs.* Steam Propeller Wm. E. Reis, The Cleveland Steamship Co., Claimant. Assignments of Errors. Filed July 11, 1906. At — o'clock — M. H. F. Carleton, Clerk. Kline, Tolles & Goff, and R. M. Lee, Proctors for Appellants.

27 April Term, A. D. 1906.

WEDNESDAY, *July 11th, A. D.* 1906.

Present: The Honorable Robert W. Tayler, District Judge.

2414. Admiralty.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL., Libelants,
vs.
STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

This cause came on to be heard this 11th day of July, 1906, upon the libelants' notice of appeal, assignment of errors and petition for appeal; and their appeal is hereby allowed as in said petition prayed for solely upon the questions of jurisdiction certified; and it is ordered that said appellants enter into an appeal bond in the sum of two hundred and fifty (250.00) dollars, conditioned to prosecute their said appeal to effect and to pay any costs thereof which may be awarded against them.

Journal 27–182.

28 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL., Libelants,
vs.
STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Appeal Bond.

Know all men by these presents that The Cleveland Terminal & Valley Railroad Company, a corporation, and The Detroit & Cleveland Navigation Company, a corporation, appellants, and The National Surety Company, Surety, are held and firmly bound unto the Cleveland Steamship Company, and whom it may concern in the sum of two hundred and fifty (250.00) dollars, to the payment of which, well and truly to be made, we hereby bind ourselves, our successors and assigns, jointly and severally by these presents.

The condition of this obligation is such that whereas the above named princip*les*, The Cleveland Terminal & Valley Railroad Company and The Detroit & Cleveland Navigation Company, appellants, have appealed to the Supreme Court of the United States from the final decree heretofore entered in this cause, dismissing the libel

Now therefore, if the above named appellants shall prosecute their appeal to effect and pay all costs which may be decreed against them upon such appeal, then the above obligation to be void; otherwise to remain in full force and effect.

THE CLEVELAND TERMINAL & VALLEY R. R., AND
DETROIT & CLEVELAND NAVIGATION CO.,
By KLINE, TOLLES & GOFF, *Proctors;*
NATIONAL SURETY CO.,
By LESLIE H. WEBB, *Attorney in Fact.*

Approved,
TAYLER, *Judge.*

July 11th, 1906.

29 (Endorsed:) #2414. U. S. District Court, Northern District of Ohio Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al., vs.* Steam Propeller Wm. E. Reis, etc. The Cleveland Steamship Co., Claimant. Bond on Appeal. Filed July 11, 1906 At — o'clock — M. H. F. Carleton, Clerk.

30 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL., Libelants,
vs.
STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Certificate of Jurisdictional Issues.

The questions of the jurisdiction of the Court in this action are hereby certified to the Supreme Court as follows:

On May 19th, 1906, The Cleveland Terminal & Valley Railroad Company and The Detroit & Cleveland Navigation Company filed their libel *in rem* against the steam propeller Wm. E. Reis, and a warrant of arrest was issued thereon under which said vessel was seized by the marshal, whereupon The Cleveland Steamship Company filed a claim to said vessel as owner thereof, and a bond to answer the decree, and said vessel was released to the claimant. Said claimant also filed an exception to the libel, based upon the ground that the same does not state a cause of action within the admiralty and maritime jurisdiction of this Court.

On July 2nd, 1906, and at the present term of this Court, a hearing was had upon said exception, and the same was sustained, and

the following final decree was entered by the Court upon the same day:

"This day came the parties by their proctors, and this cause came on to be heard upon the exception to the libel filed herein. Arguments of counsel were submitted, whereupon it is ordered adjudged and decreed that the exception be and the same is hereby sustained, and the libel herein dismissed; to which order and judgment of the Court libelant then and there excepted and gave notice in open Court of intention to appeal."

31 Said libel contained the following allegations:

"The libel of The Cleveland Terminal & Valley Railroad Company, a corporation, and The Detroit & Cleveland Navigation Company, a corporation, against the steam propeller Wm. E. Reis, her engines, boilers, machinery, boats, tackle, apparel and appurtenances, and against all persons intervening for their interest therein, in a cause of collision and damage, civil and maritime, alleges and propounds as follows.

(1) Libelant, The Cleveland Terminal & Valley Railroad Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, and is and at all times herein mentioned was sole owner of a certain railway swing or draw-bridge, together with the abutments, center pier, protection piling and appurtenances thereof, which said bridge is located in the City of Cleveland, Ohio, and spans the Cuyahoga River, a navigable river of the United States; and also a co-owner with said Detroit & Cleveland Navigation Company of the dock property hereinafter mentioned.

(2) Libelant, The Detroit & Cleveland Navigation Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Michigan, and is and at all times herein mentioned was co-owner with said The Cleveland Terminal & Valley Railroad Company, of a certain dock on the easterly side of the Cuyahoga River, located next below the bridge of said Railroad Company herein referred to; said two libelants being the sole owners of said dock.

(3) At all times herein mentioned the steam propellers Wm. E. Reis, James B. Eads and John W. Moore were, and they are steam vessels of the United States, each duly enrolled, licensed, fitted, equipped and adapted for the business of navigation and commerce upon the Great Lakes and their tributary and connecting waters, and for several years prior to the disaster herein referred to, each had been engaged in such business of navigation and commerce as bulk freight carriers upon said waters. Said propeller Reis is a vessel of about 4748 tons burden; said propeller Eads is a vessel of about 3746 tons burden; and said propeller Moore is a vessel of about 1961 tons burden.

(4) Prior to the disaster herein referred to, which occurred on January 22nd, 1904, said propeller Eads lay moored at a dock on the westerly side of the Cuyahoga River, between Columbus Street and Center Street bridges, without cargo, headed up stream; and the

propeller Moore, without cargo, lay moored at a dock on the westerly side of said river just above said propeller Eads, headed up stream with her stern a short distance above the stem of the Eads. Each of said two last named propellers was so moored and secured to its dock, and its moorings were so handled and attended to, that neither of said vessels broke adrift from its moorings until the happening of the collisions hereinafter referred to.

(5) On said morning of January 22nd, 1904, said propeller Reis lay moored at a dock on the same side of said Cuyahoga River, above Columbus Street bridge, known as the River Furnace Ore Dock, loaded with nearly a full cargo, consisting of about 4500 tons of iron ore. The point at which she so lay is half a mile or more up stream above the point at which the Moore lay, and said Cuyahoga River, in the navigable waters of which each of said three vessels so lay moored, is and at all times herein mentioned was, from a point far above such location of the Reis, down past the location
32 of the Moore and Eads, the location of said bridge, and thence down to its confluence with Lake Erie, a public and navigable river and water-way of the United States; and at the time in question many vessels lay moored on either side of said river above and below those herein mentioned.

(6) For several weeks preceding the disaster herein referred to there had been continuous and heavy falls of snow in and about the City of Cleveland, and until about three days prior to Friday, January 22nd, 1904, the ground was deeply covered with snow, not only in and about Cleveland, but along the course of the Cuyahoga River for many miles southerly from Cleveland. On Tuesday, January 19th, 1904, it became very warm, there was heavy rain, and from that time until the morning of January 22nd, it continued to thaw rapidly and to rain continuously, causing the waters of the Cuyahoga River to rise gradually, and the rising waters formed an unusually strong current.

(7) At the point where the Reis lay the river forms an abrupt bend, and the Reis was permitted to lie with her stem at the point of this bend, out somewhat from the dock, so that part of the current of the gradually rising river set between her and the dock.

(8) About 8 or 8:30 o'clock on Friday morning, January 22nd, 1904, all of the lines and cables by which the Reis was moored to the dock, parted and she broke adrift from her moorings, drifted down with the current of the river through Columbus Street Bridge, and her stern collided with the stem of the propeller Moore, striking the latter vessel with such force as to carry away the Moore's fastenings and force her into collision with the propeller Eads, the Eads' moorings were thereby carried away, and all three vessels thereupon drifted with the current down the river through Center Street Bridge, and into and partially through said Railroad Company's Bridge.

(9) Said Railroad Company's bridge was constructed in the following manner: The superstructure thereof rested upon a center pier, which was located somewhat to the westward of the center of

the river, and which consisted of several circular courses of stone work, supported by a foundation of wooden piling driven into the river bottom, the stone work being partially under water and partially above water. The superstructure was so constructed that it could be swung on this center pier by means of machinery and steam power, to permit the passage of vessels between such center pier and the shore. Said center pier and the space occupied by the superstructure when swung open were surrounded by a continuous line of protection piling, driven into the river bottom, and extending about nine feet above the water level. This piling stood out in the channel about four or five feet on either side from the center pier and about the same distance out from the sides and ends of the superstructure when swung open, in such manner as to prevent a passing vessel from coming in contact with the center pier or with any part of the superstructure. There were three lines of heavy timber waling fastened to the outer sides of this protection piling, one near the water level, one at the top of the piling and one midway, so placed that they would act as fenders between the piles and any
33 vessel that might come in contact with them; and the piling was so driven that it would spring and yield under the impact of a passing vessel, thus minimizing the effect of such impact.

The shore abutment on the easterly side of the river consisted of solid stone work, its river face being flush with the easterly side of the channel and dock line.

A continuous line of protection piling, faced with waling timbers, so driven that it would spring and yield under impact, and similar to that surrounding the center pier, was placed around the river face of this shore abutment (not forming a part of said abutment, or being connected or joined thereto), projecting out diagonally from the dock line above the abutment to a point opposite the upper corner thereof, thence running parallel with the face of the abutment to its lower corner and thence diagonally in to the dock line below. This piling was also driven into the river bottom, extending about nine feet above the water line, and, opposite the abutment, stood out in the river channel four or five feet from the abutment and dock line with deep water between it and the abutment.

Said center pier, the protection piling surrounding the same and the protection piling in front of said shore abutment, stood in the navigable channel of said river, in water from fifteen to twenty feet deep, and surrounded by water on all sides.

The Cuyahoga River is a narrow stream, and the draws of this bridge and of the numerous other bridges spanning the river are narrow as compared with the width of the larger class of vessels which pass through them. The wind, the currents and other forces frequently cause passing vessels to come in contact with such protection work of this and other bridges at Cleveland; and, they would frequently collide with the stone work of the center pier and shore abutment were the same not guarded by such protection piling. This protection work was constructed about the center pier and shore abutment of this bridge in the manner just above described, and was

maintained in part for the purpose of protecting such pier and abutment from damage, and also to enable passing vessels to navigate through the draw of said bridge safely and to protect them from such damage as would result from their colliding with or rubbing against the solid masonry of such pier and abutment.

(10) Libelant's said dock, next below said bridge, consisted of a heavy timber flooring placed on a frame work of stringers and beams, supported by piles driven into the river bottom, adjoining the bank of the river and parallel with its course. The river was kept dredged to such depth along the face of said dock as to permit vessels to be floated and moored tight alongside thereof, said dock was equipped with mooring piles for that purpose; and said dock was constructed and at the time of said disaster was maintained for the purpose of enabling vessels to so make fast thereto and to discharge cargo thereon and receive cargo therefr[illegible]. The waters of the river flowed under said dock.

(11) As said three vessels so drifted down the river in the manner described in the 8th article hereof, the stern of the propeller Moore collided with libelant's said dock, crushed in the stringers, flooring and piling thereof along its river face, thus causing damage thereto to the amount of four hundred nineteen and 70/100 (419.70) dollars, which amount libelants were necessarily obliged to expend in repairing such damage.

(12) As said vessels so drifted down the river in the man-
34 ner described in article 8 hereof, said propeller Eads' stern brought up against a pier below said Railroad Company's bridge; said propeller Moore brought up against said dock abreast of the Eads; and the stern of said propeller Reis drifted in between the Eads and the Moore, forcing the forward portion of the Eads into collision with the center pier of said Railroad Company's bridge and the protection work about the same, damaging the same. Said three vessels, thus wedged together, partially dam[illegible] the river's flow, causing the water above them to rise rapidly, and diverting and greatly increasing the current, and causing it to sweep so violently under the keels of the Eads and the Reis, (which lay in and above the easterly draw of said Railroad Company's bridge) that it undermined both said center pier and said shore abutment, and partially carried away the protection piling surrounding the same and the protection piling in front of said shore abutment.

Said Railroad Company has partially repaired the damage so occasioned to said center pier and said protection work, in the doing of which it has incurred a necessary expense of two thousand, seven hundred and seventy and 26/100 (2770.26) dollars. It is impossible to replace the pile supports under said center pier which were so carried away, and, in order to permanently repair such damage by other practical means so as to restore said pier to its former strength and durability, said Railroad Company will be required to incur necessary expenses estimated at eighteen thousand, nine hundred and forty two dollars ($18,942.00).

By reason of the premises said bridge could not be closed for the period of ten days, during which period said Railroad Company was

unable to run its trains across the same and thus lost the use thereof, and incurred necessary expense in and about the transporting of its cars across said river by other means, to the amount of one thousand, two hundred fifty-seven and 50/100 (1257.50) dollars.

The total loss and damage so sustained by said Railroad Company on account of the injuries to its said bridge pier and protection work, and on account of the loss of the use of said bridge, amounts to the sum of twenty-two thousand, nine hundred and sixty-nine and 76/100 (22,969.76) dollars.

(13) On information and belief libelants aver that the breaking adrift of the Reis, the collisions between the Reis, the Moore and the Eads, the breaking adrift of the Moore and the Eads, their collision with said Railroad Company's bridge, pier and protection work, the damage thereto, and the damage to libelant's said dock, each and all occurred without fault or negligence on the part of the libelants, and were each and all solely caused by the negligence and fault of said propeller Reis, and those in charge of her; and, reserving the right to urge all such other and further faults as may develope at the hearing of this cause, libelants aver upon information and belief that said propeller Reis and those in charge of her were guilty of the following specific faults:

(*a*) The Reis did not have out sufficient or proper moorings for such a position as she occupied in the river.

(*b*) Those in charge of the Reis negligently failed to make use of any additional fastenings and moorings beyond those which she had out prior to said thaw and rise of water.

(*c*) Those in charge of the Reis negligently failed to slacken such fastenings as she had out after said thaw and rain and rising of water commenced so as to permit her to rise with the rising water; negligently permitted such fastenings as she had out to be put on *and* undue and unequal strain by the lifting of the vessel with the rising water; negligently failed to adjust said fastenings and to take such other seaman-like precautions concerning the same as the occasion required.

(*d*) The officer in general charge of the Reis was incompetent and inattentive to his duties and negligently failed to attend to said fastenings and moorings.

(*e*) The ship-keeper in immediate charge of the Reis was incompetent and inattentive to his duties and negligently failed to observe that the water was rising in the river during the two days preceding the said disaster, and to attend to the fastenings of the vessel.

(*f*) The anchor equipment of the Reis was negligently permitted to be and remain in such condition that both of said vessels' anchors could not be promptly dropped and utilized.

(*g*) The ship-keeper of the Reis negligently failed seasonably and properly to make use of her anchor or anchors; so as to prevent her drifting down with the current after she had so broken adrift.

Libelants have requested the owner of said propeller Reis to pay them the damages they have so sustained but it refuses so to do and no part of said damages have been paid.

Libelant, The Cleveland Terminal & Valley Railroad Company,

claims a maritime lien upon said propeller Reis and her appurtenances on account of the damage so sustained by it, growing out of the injury to its bridge, pier and protection work mentioned above; and the libelants claim a maritime lien against said propeller Reis and her appurtenances on account of the damage to their said dock above mentioned.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable Court; and the said propeller Wm. E. Reis is now within the Northern District of Ohio.

Wherefore libelants pray that process in due form of law, according to the course and practice of this honorable Court in causes of admiralty and maritime jurisdiction may issue against the said propeller Wm. E. Reis, her engines, boilers, machinery, boats, tackle, apparel, appurtenances, by warrant of arrest; that all persons having or claiming any interest therein may be cited to appear and answer on oath all and singular the premises; that on final hearing this honorable Court may be pleased to decree against said propeller Reis and her appurtenances and in favor of these libelants for their said damages, together with interest and costs; that said propeller Wm. E. Reis and her said appurtenances may be condemned and sold, that the proceeds of such sale may be applied to the satisfaction of libelants' damages aforesaid; and that libelants may have such other and further relief as they are entitled to receive."

36 The libel sets forth a sufficient cause of action *ex delicto* against the owner of said propeller Reis; but this Court sustains the exception to the libel on the ground that, although the property injured by said disaster, said dock, said center pier and said protection piling work, stood in the navigable water of said river, yet it does appear from the allegations of the libel that any part of said property so injured was either an instrument of or an aid to navigation, for which reason there is no authority for sustaining the jurisdiction of a Court of Admiralty over the wrong complained of and the cause of action set forth in the libel.

Now, therefore, this Court hereby certifies that the questions of jurisdiction to be presented to the Supreme Court of the United States upon this appeal are as follows:

(1) Has this Court, sitting in Admiralty, jurisdiction to entertain this libel, based on the damage done to said dock, center pier and protection piling, located in the navigable waters of the Cuyahoga River, as above set forth, attached to the river bottom by piling driven therein, constructed in the manner and maintained for the purposes above set forth; said damage thereto consisting of the breaking in of said dock and its timbers and piling and the breaking in, undermining and carrying away of said protection piling and the piling supports of said center pier; said injury and damage being caused by the negligent and wrongful breaking adrift of said propeller Reis, and her collision with said propellers Moore and Eads, the drifting of said vessels partially through said bridge draw and into collision with said protection piling and center pier, their collision with said dock, and the wedging together of said vessels in and below the draw of said bridge, in the manner above stated?

(2) If this Court has not jurisdiction over all such damage, has it jurisdiction to entertain a libel based on the damage done to said dock?

37 (3) Has it jurisdiction over the damage so done to said protection piling?

(4) Has it jurisdiction over the damage so done to said center pier?

In witness whereof I hereunto set my hand at Cleveland, Ohio, this 11th day of July, A. D. 1906.

R. W. TAYLER,
District Judge.

38 [Endorsed:] 2414. United States District Court Northern District of Ohio Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Co. *et al. vs.* Steam Propeller Wm. E. Reis The Cleveland Steamship Co. Claimant. Certificate of Jurisdictional Questions. Filed Jul- 11 1906. At — o'clock — M. H. F. Carleton, Clerk. Kline Tolles & Goff Roger M. Lee Proctors for Appellants.

39 *Citation.*

The Supreme Court of the United States.

The President of the United States to The Cleveland Steamship Company, Goulder, Holding & Masten, Proctors, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, D. C., on the 8th day of October next, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Northern District of Ohio, Eastern Division, in a certain cause wherein The Cleveland Terminal & Valley Railroad Company and The Detroit & Cleveland Navigation Company are appellants, and The Cleveland Steamship Company is appellee, to show cause, if any there be, why the final decree rendered against the said appellants in said appeal mentioned should not be corrected and why speedy justice should not be taken in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 11th day of July, in the year of our Lord one thousand nine hundred and six, and of the independence of the United States the one hundred and thirty-first.

R. W. TAYLER,
District Judge.

KLINE, TOLLES & GOFF,
ROGER M. LEE,
Proctors for Appellants.

We hereby acknowledge service of a copy of the above citation this 11th day of July, 1906.

GOULDER, HOLDING & MASTEN,
Proctors for Appellee.

40 [Endorsed:] 2414 United States District Court, Northern District of Ohio, Eastern Division In Admiralty The Cleveland Terminal & Valley Railroad Co. *et al*, *vs.*, Steam Propeller "Wm. E. Reis" The Cleveland Steamship Co. Claimant Citation Filed Jul- 11 1906 at — o'clock — M. H. F. Carleton, Clerk. Kline Tolles & Goff Roger M. Lee, Proctors for Appellants.

41 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL., Libelants,

vs.

STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Stipulation.

It is hereby stipulated between all the parties in the above entitled action, by their respective proctors, that in preparing the transcript of the record in this action to be certified to the Supreme Court of the United States on the libelants' appeal from the dismissal of the libel by the District Judge, the Clerk of the District Court may omit therefrom the original libel, as the certificate of the District Judge, which forms a part of the record, contains a full copy of said libel, except the caption and verifications thereof. This stipulation is made pursuant to Section 3, Rule 52 of the general admiralty rules of the Supreme Court.

KLINE, TOLLES & GOFF,
ROGER M. LEE, *Proctors for Appellants.*
GOULDER, HOLDING & MARTEN,
Proctors for Appellee.

42 (Endorsed:) #2414. U. S. District Court, Northern District of Ohio Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al.*, *vs.* Steam Propeller Wm. E Reis, Stipulation. Filed July 13, 1906. At — o'clock — M. H. F. Carleton, Clerk.

43 In the District Court of the United States for the Northern District of Ohio, Eastern Division. In Admiralty.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL., Libelants,
vs.
STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Precipe.

To the Clerk of the Court:

Please include in the transcript of the record on appeal of the above entitled cause to the Supreme Court of the United States, all pleadings and papers filed in said cause, together with all docket and journal entries, as required and provided for by Rule 52 of the General Admiralty Rules of the Supreme Court, excepting only the libel, which may be omitted pursuant to Section 3 of said Rule 52, and in accordance with the stipulation herewith filed, consenting to such omission, in view of the fact that the District Court's certificate includes a copy of said libel.

KLINE, TOLLES & GOFF,
ROGER M. LEE,
Proctors for Appellants.

—— ——.

44 (Endorsed:) #2414. U. S. District Court, Northern District of Ohio Eastern Division. In Admiralty. The Cleveland Terminal & Valley Railroad Company, *et al.*, *vs.* Steam Propeller Wm. E. Reis, etc. Precipe. Filed July 13th–1906 At — o'clock — M. H. F. Carleton, Clerk.

45 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 2414.

THE CLEVELAND TERMINAL & VALLEY RAILROAD COMPANY ET AL.,
vs.
STEAM PROPELLER WM. E. REIS, THE CLEVELAND STEAMSHIP COMPANY, Claimant.

Clerk's Certificate.

I, H. F. Carleton, Clerk of the United States District Court, within and for the Division and District aforesaid, do hereby certify, that the attached and foregoing pages contain a full and true copy of the Petition for Appeal, Order allowing same, Assignment of Errors

and all other papers filed, and proceedings had and entered in this Court, as they appear of record in my office, with exception of the Libel originally filed. That I have compared said papers with the originals, and that they are true and correct transcripts therefrom and of the whole thereof.

I further certify, that there is also transmitted with the foregoing, the original Certificate of Jurisdictional Questions as filed herein, and the original Citation issued and allowed in the above entitled cause.

And, that said transcript is prepared in accordance with the Precipe and Stipulation as filed herein, which are made a part of this record.

Witness my official signature and the Seal of said Court, at Cleveland, in said District, this 7th day of August, A. D. 1906, and in the 131st year of the Independence of the United States of America.

[Seal of the District Court, Northern District of Ohio.]

H. F. CARLETON,
Clerk U. S. District Court,
By F. J. DENZLER,
Deputy Clerk.

Endorsed on cover: File No. 20,333. N. Ohio, D. C. U. S. Term No. 84. The Cleveland Terminal and Valley Railroad Company and The Detroit and Cleveland Navigation Company, appellants, *vs.* The Cleveland Steamship Company. Filed August 13, 1906. File No. 20,333.